



भारतीय बीमा विनियामक और विकास प्राधिकरण
INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY OF INDIA

Title:Final Order in the matter of

Reference No.:IRDA/Life/Ord/Misc/086/04/2012

Date:13/04/2012

M/S Birla Sun Life Insurance Company Limited

***Final Order in the matter of
M/S Birla Sun Life Insurance Company Limited***

Based on Insurer's Reply dated 30/8/2011 to the Show Cause Notice dated 27th July, 2011 and Submissions made in Personal Hearing on 1st February, 2012 at 03:00PM at the office of Insurance Regulatory and Development Authority, 3rd Floor, Parishrama Bhavanam, Basheerbagh, Hyderabad

Chaired by Sri J. Hari Narayan, Chairman, IRDA

The Insurance Regulatory and Development Authority (hereinafter referred to as “the Authority”) carried out an onsite inspection of M/s. Birla Sun Life Insurance Company Limited (hereinafter referred to as “the Insurer”) between 20th September, 2010 to 24th September, 2010. The Authority forwarded the copy of the Inspection Report to the Insurer under the cover of letter dated 22nd November, 2010 and sought the comments of the Insurer to the same. Upon examining the submissions made by the Insurer vide letter dated 20th December, 2010, the Authority has issued a Show Cause Notice on 27th July, 2011 which was responded to by the Insurer vide replies dated 30th August, 2011. As requested therein, a personal hearing was given to the Insurer by Chairman of the Authority on 01st February, 2012. Mr. Jayanth Dua, CEO & Managing Director, Mr. Mayank Bathwal, CFO & Head Institutional Sales, Mr. Lalit Vermani, Sr. Vice President & Head Compliance, Legal, Internal Audit & Risk, Mrs. Priscilla Sinha Appointed Actuary, Mr. Shashi Krishnan CFO, Mrs. Keerthi Gupta Associate Vice President-Investment & Risk Compliance and Mr. Ram Subhag Singh Thakur, Associate Vice President-Compliance of the insurer were present in the hearing. On behalf of the Authority, Mr. Sriram Taranikanti, FA, Mr. Kunnel Prem, CSO (Life), Mr. Suresh Mathur, Sr. JD (Intermediaries), Mr. Randip Singh Jagpal, JD (Non-Life), Mr. SN Jayasimhan, JD (Investments), Mrs. J. Meena Kumari, JD (Actuarial), Mr. V. Jayanth Kumar, JD (Life), Mr. Satish Hegde, OSD and Mr. K. Sridhar Rao Asst. Director, were present in the personal hearing.

The submissions made by the Insurer in their written reply to Show Cause Notice as also those made during the course of the personal hearing were taken into account.

The findings on the explanations offered by the Life Insurer to the issues raised in the Show Cause Notice dated 27th July, 2011 are as follows.

Violation of Section 5 of IRDA (Investment Regulations, Fourth Amendment), 2008

Inspection observation 1(a): Insurer has not adhered to the Exposure/Prudential norms at “Investee Company” level, at segregated fund level in respect of ULIP funds.

Inspection observation 1(b): Insurer has not adhered to the ceilings prescribed for investments in different industrial sectors in respect of ULIPs at segregated fund level

Inspection observation 1(d): Insurer has breached the prescribed limit of 5% of fund size while investing in Mutual Funds and categorizing them as “Approved Investments”.

Inspection observation 1(f): The operating guidelines of the company don't contain restriction on exposure norms for long term debt in respect to investee company, Group and Sector level for Platinum plus Fund.

Decision: *The Insurer has submitted that he has acted as per the directions of the Authority issued vide Regulation 3 (Investments) point 3, Investment Regulation 5 and The Asset Liability and Solvency Margin of Insurers Regulations, 2000, Schedule IIA 1(c). Insurer has also confirmed that in view of the IRDA Circular IRDA/F&I/CIR/INV/173/08/2011 dated 20th July, 2011, realigned its portfolio to come in compliance with the issued circular effective 1st October, 2011. Taking into account the submissions made by the Insurer, the Charges are not pressed.*

Violation of Regulation 9(2), 9(2)(i) and 9(2)(iii) of Investment Regulations,

Inspection Observation 4: Fund wise Investment Policy for ULIPs not available, Investment policy totally silent about exposure & prudential norms and investment do not have clear norms for investing in ‘other investment’ there by violating Investment Regulations.

Decision: *The Insurer has submitted that their investment policy point 2.1 & point 6 clearly mandate requirement of fund wise investment norms. And that the operating guidelines and PPP norms therein provide details of the exposure and prudential norms applicable to individual schemes. And that further the authority matrix contained therein defines approval limits for all types of investments including “other investments”. The submissions of the Insurer are accepted and charges not pressed*

Violation of Part III of Disclosure Norms 1.2.3 of ULIP Guidelines, 2005

Inspection Observation 1(c): Company has not published the correct information of the securities held under various funds in its magazine thus violated the above point.

Decision: *Insurer has submitted that there was a typographical error and the revised fact sheet was uploaded on the website soon after the error was discovered and also incorporated additional controls to avoid this in future thus ensured transparency and policy holders’ protection. The submissions made are taken into account and the Charges are not pressed.*

Operating Guidelines of the Insurer contradict provisions of Investment Regulations

Inspection Observation 1(e): The operating guidelines of the Insurer state that prudential & exposure norms laid down and approved by its Investment Committee would need to be considered only at the time of making investment and not subsequently which in contravention to the provisions of Investment Regulations.

Decision: *Insurer has submitted that all limits are being monitored on a real time basis through automated integrated investment managements system. The system does not permit any transaction if it does not meet the internal and regulatory norms. If the exposure exceeds the stipulated limits due to non controllable events like market movement,*

unit capital movement or any other factor, the system restricts any additional purchase of the said security. The excess exposure is corrected within next 30 days. **The submissions made are taken into account and the Charges are not pressed.**

– Violation of note 4 to Regulation 5 of IRDA (Investment Regulations, 4th Amendment) 2008

Inspection Observation 1(g): Company has taken blanket approval for raising the limit up to 15% in respect of industry/group exposure.

Decision: *The Insurer has submitted that the Investment Committee, as per the authority given to it by the Board of Directors, reviewed the exposure norms at group and industry level in its 41st meeting held on 28/01/2011 and has restricted the increased exposure to limited sectors only. The submissions of the Insurer are taken into account. However the delegation of authority, given to it by the board, by investment committee of the insurer is not proper and the insurer is advised to strictly follow henceforth the prescription of Note 4 to Regulation 5 of IRDA Investment Regulations.*

Violation of Regulation 2(CC) of IRDA (Investment Regulations, 4th Amendment) 2008

Inspection Observation 2: Insurer has categorized the investments in mutual funds as “Money Market Instruments for the purpose of public information.
(Product Brochure of Titanium plus Plan)

Decision: *Insurer states that BSLI invests in liquid mutual funds and they have included the Mutual Fund in the ‘Money Market and Cash’ segment in the product brochure to represent investments in short term investment. Insurer also submitted that now an alteration was made in the product brochures to show Mutual Fund separately. Taking into account the corrective actions taken by the Insurer the Charges are not pressed.*

Inspection Observation 4(4): Investment policy has prescribed that the company may invest in foreign currency assets or foreign jurisdiction after approval of Investment Committee – violation of the above.

Decision: *The Insurer states that as a policy of the Company they match closely the currency of its assets with those of its liabilities. For investments in foreign currency assets or foreign jurisdictions insurer shall require prior approval of the Investment Committee. And it will be in line with the Investment Plan submitted to the Board. Currently the policy does not authorize investment in foreign currency assets and insurer has confirmed that they have never made any investments outside India or in foreign currency.*

Taking into account the submissions made that they never made any investments outside India or in foreign currency, the Charges are not pressed. However the Insurer is advised to remove the said provision from Investment policy.

Violation of Section 2(h) of IRDA (Registration of Indian Insurance Companies) Regulations

Inspection Observation 6(b) & 6(c): Investments in PTCs of India structured asset Trust-series XII where the underlying assets are locomotive and PTCs of Corporate Debt Trust, Class A1 Series 16 – categorized as “Approved Investments” thus violated the above.

Decision: *Insurer has submitted that they have taken guidance from Regulation 2(h) and Regulation 3 of IRDA (Registration of Indian Insurance Companies) Regulations while deciding on the sector classification of the investments in PTC and classified the investment as approved. Taking into account the submissions made by the Insurer the Charges are not pressed.*

Violation of Guidelines given in Investment Guidelines, 2008, Annexure III, A, General (1)

Inspection Observation 7: Investment Guidelines stipulate that all the multiple data entry systems should be seamlessly integrated without manual intervention. However, it is observed that the corporate action entry is fed into M-fund manually by the Insurer.

Decision: Insurer submitted that all processes except the corporate action of equity of asset class are automated and integrated in the current investment management system (M-Fund) and this is an industry level issue. Equity corporate action accounting is partially manual. Bilav is the common vendor for providing this service to the insurance industry. BSLI and other industry players are in conversation with the vendors to provide a direct upload interface/file to avoid manual intervention. They have further submitted that they would endeavour to go live on this enhancement of corporate action upload by 31st March 2012. **After examining the submissions made by the insurer the Charges are not pressed.**

Violation of Proviso No.10.5 of “Guidelines on Unit Linked Insurance Products”, dated 21/12/2005

Inspection Observation 9: It is observed that the company is not computing the daily NAV in respect of its ULIP funds, in the manner prescribed by the Authority i.e., arriving at appropriation/expropriation based on fixed transaction costs rather than actual expenses incurred in sale/purchase of equities.

Decision: Insurer has submitted that he is following the NAV computation methodology stated in the above guidelines. Insurer has stated that it would not always be true to have a defined correlation between the trades done for the day in the fund and appropriation or expropriation of the fund, as the fund could be buying even though there is net redemption for the day and vice versa due to prevailing market condition. Insurer has confirmed that based on the circular no. IRDA/F&I/CIR/INV/187/08/2011 requiring NAV declaration without appropriation/expropriation methodology, they have started declaring NAV as per the new methodology from 18th August, 2011. **The submissions made are taken into account and the Charges are not pressed.**

Violation of provisions mentioned in Clause 3.2(i) (c), 3(iv) and 3(II) (iii) (b) (iii) of Master circular 2010 on AML/CFT Guidelines

Inspection Observation 14: It is observed in number of instances of STRs that, huge remittances are being received from the policy holders towards the premiums, which are in multiples of their recorded/evidenced source of income.

Decision: Insurer submitted that all the requirements as specified under the Master Circular 2010 under AML/CFT guidelines. Insurer states that they have an automated system to track and identify suspicious activity in any of their policy holder's accounts and report the same to FIU-IND. Insurer while explaining the new business process of the Company informed the house that they have foolproof system to track suspicious source of income. **The submissions made are considered and the Charges are not pressed.**

Violation of Guidelines issued vide Master circular 2010 on AML/CFT Guidelines

Inspection Observation 25 & 26: It is observed that the employees of vendors who process more than 70% of the business for the Insurer are not trained on AML matters. It is also observed that the company has not carried out due diligence/AML checks in case of assignment to third party individuals.

Decision : Insurer submitted that vendor services are restricted to clerical activity only like data entry, scanning etc and ensured that employees of vendors are trained on set business rules and BSLI employees are responsible for due

diligence of KYC documentation. With regard to assignment to third party individuals, company has confirmed that they are registering assignment only on receipt of KYC documents of the assignee. **The submissions made are taken into account and the Charges are not pressed.**

Violation of the provisions mentioned in Circular no.55/IRDA/Act/ULIP/2009-10 dated 24/09/2009

Inspection Observation 11: The Company has subdivided the 9 funds offered for its group plans into plan-1 and plan-2 with separate NAVs.

Decision: The Company has agreed that they have divided the funds as plan-1 & plan-2 under the group plans offered by BSLI to differentiate the Pre-ULIP and Post-ULIP group plans. The sub divided funds continued to exist after 1st July 2006 even after issue of circular no 55/IRDA/ACTL/ULIP/2009-10 only for the existing policies of the product that started before 1st July 2006. The Insurer further submitted that circulars issued by the Authority did not envisage modifications to be effective retrospectively to already issued policies. **The submissions of the Insurer are taken into account and Charges are not pressed.**

Violation of F&U procedure

Inspection Observation 35: It is observed that the company has engaged the services of several consultancies on fee basis for valuation of Gratuity/Superannuation benefits and issuing certificates to clients as per AS 15. However, this is not disclosed while filing the products. The valuation is the responsibility of Trustee/Employer.

Decision: Insurer submitted that the valuation of Gratuity/Superannuation benefits considered being a service rendered to customer and it is not a product feature and it was not disclosed in product F & U. Insurer further submitted that independent valuation prevents conflict of interest thus providing comfort to the client and it is the practice prevailing in the market. **The submissions made are considered and the Charges are not pressed.**

Violation of Cl.21 of Guidelines on Licensing of Corporate Agents, dated 14/07/2005

Inspection Observation 10: It is noticed that the company has entered into various agreements/MOUs with its distribution channel partners/Bancassurance partners and the related parties of the distribution channels in the name of joint marketing activities/advertisements etc. It is noticed that an amount of Rs.58.81 Crores and Rs.109.49 Crores were paid to such entities during the financial years 2009-10 and 2008-09 under the head "Advertisement & Publicity – Channel Expenses".

Decision: Insurer has submitted that, given the complexity of life insurance products and low awareness amongst the clientele these expenses are relating to joint marketing initiatives carried out to increase awareness about insurance and are within allowable expenses. The above provision permits reasonable co-branding expenses with corporate agents without linkage to the success in sale or premium earned by the Corporate Agent. Insurer submitted that corporate agents & Banks contributed 25% of the first year individual premium for the years 2008-09 & 2009-10. The commission paid to these channels worked to 24.66% and advertisement expenses reimbursed were 7.17% of total first year premium. Commission and advertisement & publicity expenses taken together remained at 25% to 32% of total first year premium which is well below the allowable commission rate (40% in case of BSLI). Insurer also states that their company's expenses are well within the allowable limit under rules 17D of Insurance rules 1939. However it has been observed that the Advertisement/Publicity expenses for all the channels of the insurer (excluding Corporate Agency and banks) put together stood at 5.79% and 5.72% for 2008-09 and 2009-10 respectively. However the same percentage for Corporate agency and Bank channel works out to 7.17% and 8.43%. **From the submissions made, it is apparent that the above referred payments are broadly in order with the provisions of Clause 21 and hence the charges are not pressed.**

Violation of 4(6) of IRDA (Protection of policyholders' interests) Regulations, 2002

Inspection Observation 16: It is observed that proper follow up is not done with the proposers to obtain pending

requirements.

Decision: Insurer submitted that auto generated communication on pending requirements dispatched to proposers on the 10th, 20th, 30th and 38th day from the application receipt date with documentary proof. Insurer also informed the house that follow-up is being done through SMSs for all the pending proposals ***The submissions made by Insurer that proper follow up is indeed being done to obtain pending requirements from proposers is considered and the Charges are not pressed.***

Violation of provisions of Circular 041/IRDA/BOO/Dec-06

Inspection Observation 28: It is observed that while some of the branches are being relocated or closed the company has not ensured to comply with the Authority's instructions with regard to the intimation to the Authority and policy holders.

Decision: Insurer submitted that they have ensured strict compliance with the provisions of the above circular at all times. They have also submitted documentary proof to the same. ***Taking into account the submissions made by the Insurer the Charges are not pressed.***

Violation of provisions mentioned in ULIP Guidelines, 2005 with respect to applicability of NAV in case of death claim

Inspection Observation 30 (a) & (b) : It is observed that the date of mandatory requirements received at Head office is being taken as the date of intimation of death instead of date on which death intimation is received in any office of the company in violation of the laid down procedure. No uniform policy in applying NAV for calculating claim amount payable under death claims.

Decision: The Insurer informed that they are applying NAV as on date of lapse for lapsed policies and date of intimation for in-force policies. Hence it is not possible for them to apply uniform NAV for all cases. During the discussion it is noticed that insurer has taken the date of death and date of intimation to any office of BSLI while calculating the NAV in case of in-force policies. On examination of the further details given by the insurer it is noticed that insurer used to follow the practice of taking date of death while calculating NAV in case of in-force policies before Feb 2010. Later insurer was advised to apply the NAV as on date of intimation and from the available records and data submitted it appears insurer as stated above is applying the correct method. ***Taking into account the submissions made by the Insurer the Charges are not pressed.***

Violation of Section 40A of Insurance Act, 1938

Inspection Observation 30(d): It is observed that commission is being paid to agents even when premiums are being funded by the company under premium waiver benefit.

Decision: Insurer has submitted that there could be policy servicing requests during the term of the policy to agent and the practice of payment of commission in such cases may motivate agents to continue promoting such waiver benefits wherever applicable which again is in the interest of policy holders. ***On examining the reply of the Insurer charges are not pressed. However insurer is hereby directed to stop paying the commission to agents in all such cases where premium is funded by the company as part of premium waiver benefit.***

Violation of Section 6(2) of IRDA (protection of policyholders' interests) Regulations, 2002

Inspection Observation 32: It is observed that free look cancellations are allowed even after a period of 15 days and also observed that company has refunded full fund value along with all the charges recovered in the old policy under free look cancellations thereby not adhering to the lock in period provisions.

Decision: Insurer has submitted that they have deviated from the above regulations in the cases where requests received

*in the nature of complaints involving market conduct issues which were decided on case to case basis. Main intent is to meet customer's expectation in justified cases. Benefit if any to the policy holder are charged to shareholders' account and existing policyholders' fund not affected. **On examining the reply of the Insurer the charges are not pressed.***

Violation of F&U Procedure

Inspection Observation 32: It is observed that Top-up premium remitted along with the first premium was being accepted without minimum mandated additional risk coverage even when the top up premium is more than 25% of the first premium.

Decision: *The Insurer submitted that it has happened due to system error which has been now rectified and assured that going forward such instances would not recur. **Taking into account the submissions made by the Insurer the Charges are not pressed.***

Violation of provisions of Clause 27 of Licensing of Corporate Agents' Guidelines, 14/07/2005

Inspection observation 33: It is observed that the company is not carrying out due diligence at the time of appointment of "Business Mentors". The business mentors as mentioned in the report are working in different capacities with many insurers in contravention of the business mentor model as described by the Company.

Decision: *Insurer has submitted that they prohibit business mentor's association with any other insurance company by taking self declaration on the same while recruiting. If they are found to be in association with any other life insurance company action against them is initiated. Insurer has also expressed that due to lack of central repository of corporate agents, due diligence could not be carried out while recruiting business mentors. They also submitted documentary proof of action taken on business mentors who are associated with more than one insurance company. **Taking into account the submissions made by the Insurer the Charges are not pressed.***

Violation of IRDA/CIR/010/2003 dated 27/03/2003

Inspection observation 33(c) and 34: It is observed that unlicensed entities are involved in solicitation of insurance business.

Decision: *The Insurer has not denied the violation; however submitted that they have initiated a project, wherein process of verification of the licensed specified persons' signatures would be automated at the branch level. Target date of implementation of this control is 1/4/2012. **This is a gross violation of the above circular. Taking into account the seriousness of the violation a penalty of rupees Five Lakh is imposed on insurer under section 102(b) of Insurance Act, 1938.***

Violation of Point 7 & 11 of Guidelines on Group Insurance Policies dated 14/07/2005

Inspection Observation 37: It is observed that on settlement of death claims under non employer-employee group policies, the company is drawing the cheque in favour of the master policy holder and they are sent to the master policy holder.

Decision: *Insurer submitted that in case of affinity group policy contracts, the contract provides for an enabling provision wherein it states that it is responsibility of the MPH to ensure payment of the claim to the beneficiary. They also informed that they have not been in receipt of any complaint on the same. **The procedure adopted by the Insurer is however in violation of the Group guidelines issued by the Authority. Taking into account the seriousness of the violation a penalty of rupees One Lakh is imposed on insurer under section 102(b) of Insurance Act, 1938.***

Accordingly, in exercise of the powers conferred upon me under the Section 102(b) of the Insurance Act, 1938, I

hereby direct the Insurer to remit the penalty of Rs. 600,000 (Rupees Six Lakhs only) within a period of 15 days from the date of receipt of this order through a crossed demand draft drawn in favour of Insurance Regulatory and Development Authority, Hyderabad, payable at Hyderabad, which may be sent to Mr. Kunnel Prem, Consultant & Special Officer (Life) at the Insurance Regulatory and Development Authority, III Floor, Parishrama Bhavanam, Basheerbagh, Hyderabad – 500004.

Place: Hyderabad

Date: 12/4/2012

(J.Hari Narayan)
Chairman